

Surface Transportation Board Directs Railroads to Negotiate Disputes with Private Tank Car Owners in Accordance with 1986 Agreement

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has directed railroads to negotiate, in accordance with a 1986 agreement, disputes with tank car owners about certain charges being levied by The Burlington Northern and Santa Fe Railway Company (BNSF) and the Union Pacific Railroad Company (UP).

Railroads transport commodities such as chemicals and oil and gas products in specialized cars known as tank cars. Unlike other types of cars, tank cars have historically been owned or leased not by the railroads, but by the shippers that own the commodities being transported. When railroads use these tank cars, they pay to the car owners what is known as an "allowance."

For many years, railroad transportation in tank cars has been governed by an agreement reached by both representatives of the railroad industry and owners and suppliers of tank cars. The agreement, which was adopted by the Board's predecessor, the Interstate Commerce Commission (ICC), established a formula for the calculation of the allowances that railroads pay to private tank car owners. The agreement also established a procedure to address what are described as "departures" from the prescribed allowance system.

Last June, the North America Freight Car Association (NAFCA) and the Railway Progress Institute's Committee on Tank Cars (RPI-CTC) asked the Board to declare that certain charges for storing cars or diverting them from their original destinations are improper departures from the agreed allowances because they apply to services that, according to NAFCA and RPI-CTC, are already covered by the tank car allowance formula. Various other parties became involved in that case. Late last month, similar complaints were filed concerning certain actions proposed by UP and NS.

BNSF moved to dismiss the proceedings, UP opposed the relief sought, and NS withdrew the charges at issue. BNSF and UP argued that the charges at issue are not departures from the agreement because they relate to matters not covered by the tank car allowance formula, and that, in any case, the new charges are lawful under existing ICC precedent.

The Board expressed its willingness to resolve this matter, but concluded that, at this time, it would be more productive if the parties attempted to settle the issue privately. Therefore, it ordered the railroads to work on a resolution with other affected parties and to provide the Board with a progress report by January 14, 2002. The Board stated:

"[T]he 1986 Agreement expressly provides for us to require the parties to reopen the negotiations when more than three interested parties file petitions at the agency. Here, petitions have been filed by numerous parties. A broad base of affected parties has raised concerns and BNSF and UP have responded to the challenges of their publications. We will resolve this matter, if it becomes necessary for us to do so. At this time, however, we believe that the private parties are in a better position than we are to determine how best to resolve the issues raised in these proceedings. Therefore, we will hold these proceedings in abeyance and require the parties to engage in negotiations as provided for in the 1986 Agreement. Because these proceedings raise issues of industry-wide importance, discussions should be held on an industry-wide basis so that all affected parties can have the opportunity to participate."

The Board's decision was issued today in *North America Freight Car Association-- Protest and Petition For Investigation--Tariff Publications of The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42060, et al. Commissioner Burkes commented with a separate expression. A printed copy of the decision is available for

a fee by contacting D~2-D~ Legal, Room 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776, or via [http://Da_To_Da@Hotmail.com](mailto:Da_To_Da@Hotmail.com). The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

###